

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

v.

MATTHEW R. DESCAMPS,  
Defendant.

No. CR-05-104-FVS

ORDER DENYING MOTIONS TO  
DISMISS ON GROUNDS OF  
VINDICTIVENESS AND DOUBLE  
JEOPARDY

**THIS MATTER** comes before the Court based upon the defendant's motions to dismiss on grounds of vindictiveness and double jeopardy. He is represented by Jeffrey S. Niesen; the government by Stephanie Whitaker.

**VINDICTIVENESS**

The defendant alleges that the government's decision to seek an indictment was motivated by unconstitutional vindictiveness. This allegation is unfounded. A claim of vindictive prosecution requires evidence indicating, either directly or indirectly, that the government would not have sought an indictment but for hostility toward the defendant because he exercised specific legal rights. *United States v. Gallegos-Curiel*, 681 F.2d 1164, 1169 (9th Cir.1982). No such evidence has been presented.

**DOUBLE JEOPARDY**

The defendant was arrested initially on state charges. The state prosecuting attorney did not pursue them. Although the defendant's position is not entirely clear, he seems to be arguing that the subsequent federal prosecution violates the Double Jeopardy Clause. If so, he is incorrect. The State of Washington and the United States are separate sovereigns. Under the separate sovereigns doctrine, successive prosecutions by a state and the United States do not violate the Double Jeopardy Clause. See *United States v. Zone*, 403 F.3d 1101, 1104 (9th Cir.2005).

**IT IS HEREBY ORDERED:**

The defendant's motions to dismiss on grounds of vindictiveness and double jeopardy (**Ct. Recs. 229 and 230**) are denied.

**IT IS SO ORDERED.** The District Court Executive is hereby directed to enter this order and furnish copies to counsel.

**DATED** this 17th day of August, 2007.

s/ Fred Van Sickle  
Fred Van Sickle  
United States District Judge